

Government of the District of Columbia

ZONING COMMISSION



ZONING COMMISSION ORDER NO. 570

Case No. 87-29M/82-8C

(PUD Modification @ Penn Plaza)

March 14, 1988

Pursuant to notice, a public hearing of the Zoning Commission for the District of Columbia was held on November 23, 1987. At that hearing session, the Zoning Commission considered an application from The Sigal/Zuckerman Company and The Walter Abernathy Corporation, on behalf of a partnership to be formed, pursuant to Section 2407.9 of the District of Columbia Municipal Regulations (DCMR), Title 11, Zoning. The public hearing was conducted in accordance with the provisions of 11 DCMR 3022.

FINDINGS OF FACT

1. The application, which was filed on August 17, 1987, requested a modification to Zoning Commission Order No. 396 dated May 16, 1983 in Z.C. Case No. 82-8C.
2. Z.C. Order No. 396 granted approval of a consolidated Planned Unit Development (PUD) for lots 12, 15-17, 807, 808, and 810-813 in Square 459; lots 7, 800, and 806-809 in Square 460; and portions of Indiana Avenue and C Street, N.W. proposed to be closed. Squares 459 and 460 are zoned C-3-C and bounded by Sixth and Seventh Streets, and Pennsylvania and Indiana Avenues, N.W. No change of zoning was requested.
3. The PUD approval was for the construction of a mixed-use development, including a retail/office building on Square 460 and fronting on Pennsylvania Avenue, and a hotel/apartment/retail building on Square 459 and fronting on Indiana Avenue.
4. The PUD development was approved for a height of 110 feet for the office/retail building (known as Phase I) and 130 feet for the hotel/apartment/retail building (known as Phase II); a total gross floor area of 341,198 square feet; a maximum floor area ratio (FAR) of 6.53; a maximum lot occupancy of sixty-three (63) percent; a minimum of 364 below-grade-level parking

spaces; a minimum of 240 hotel rooms; a minimum of 150 apartment units; and four (4) loading berths.

5. The subject application requests to change one of the proposed uses for the Phase II building from hotel to office use. In connection with the use change, the applicants proposed certain design modifications and other related changes, as well as amenities associated with Phase II. The previously approved height and gross floor area of Phase II will essentially remain the same.
6. The applicants requested a change in use of Phase II because economic conditions in the downtown Washington hotel market render the operation of a hotel in this area economically infeasible. The applicants indicated that major lending institutions have confirmed that due to the saturation of the hotel market in Washington, lenders are extremely reluctant to provide construction or permanent financing for hotel uses.
7. The applicants commissioned two firms, Laventhol & Horwath and Pannell, Kerr & Forster, which indicated that severe negative economic consequences would result from the construction and operation of a hotel of any type on this site. In light of the current climate in the lending community and the market trends for a hotel use in this area, the originally approved mix of uses for this site cannot be financed and presents untenable economic risks. The applicants indicated that the detailed financial analysis of a hotel on the site demonstrated that the income stream generated by the hotel would not support the development costs associated with the project.
8. The applicant further indicated that the original design involved a mixture of hotel and residential space within the same building with a horizontal separation between the 8th and 9th floors. The modified proposal allows for a full vertical separation of the office and residential components of the Phase II project through the side-by-side placement of two independent buildings. This design change will give each of the buildings an individual design and character appropriate to its use. This separation will contribute to the creation of a distinct viable residential community, a concept that would be undermined by the common entrance lobby and elevator banks for the hotel/residential structure called for in the original plan.
9. The parking scheme has also been adjusted slightly. The original plans depicted a connection between the Phase I and Phase II garages. This connection is no

longer necessary or appropriate because the two phases will not have a common owner. Further, the connection would require the aligning of garage levels between the Phase I and Phase II projects. The alignment would be difficult to accomplish structurally and would entail a substantial expenditure.

10. The Zoning Commission conditioned its original approval of the PUD on the provision of certain project amenities. These amenities included the creation of a public garden area in the former C Street right-of-way between the Phase I and Phase II projects, the retention of the facade of the Atlantic Coastline Building in connection with the Phase I building, and the creation of jobs and additional tax revenues. The project amenities associated with the original Phase II of the project were the provision of housing and a recreation/health facility including a swimming pool accessible to residents of the project.
11. The proposed modification to the Phase II project is associated with several significant project amenities that exceed the scope of the amenities included in the original PUD application. The project amenities associated with the Phase II modification include the following:
 - a. Rental housing;
 - b. Retail tenant subsidies for small service-oriented businesses which have been displaced from elsewhere in the Downtown area.
 - c. Arts exhibition area;
 - d. Conference facility available for community groups and residents as well as tenants of the office building;
 - e. An exemplary Affirmative Action Plan;
 - f. Recreation/health facility;
 - g. Separate roof decks for the office and residential components of the project;
 - h. Streetscape improvements; and
 - i. Exemplary architecture.
12. The applicants' traffic consultant, by report dated September 1987 and by testimony presented at the public hearing, indicated that the modified proposal will not have any adverse traffic impacts on the area, nor would

the change of use from hotel to office generate a significant change in the original traffic projections.

13. The applicants indicated that the proposal is not inconsistent with the Comprehensive Plan, would promote the goal and objectives thereof, and would be consistent with the Downtown Plan, the Pennsylvania Avenue Plan, and the Draft Ward 2 Plan.
14. The District of Columbia Office of Planning (OP), by memorandum dated November 19, 1987 and by testimony presented at the public hearing, recommended that the application be approved, subject to the condition that there is a minimum of 170 residential units. OP noted that the residential component of Phase II is not proposed to be changed and stated the following:

"The residential development of this project is viewed by the city as a positive attribute which will contribute to the concept of a "Living Downtown". The architectural design of the project is of particular importance given its location on Pennsylvania Avenue. In this regard, we note that the Pennsylvania Avenue Development Corporation has given its endorsement, having found the design to be in keeping with its location on the Avenue."
15. The District of Columbia Department of Public Works (DPW), by memorandum dated November 13, 1987, indicated that the proposed modification will not have a significant effect on the transportation system in the surrounding streets, nor would the anticipated volume of traffic have an adverse impact on the adjacent intersections or streets. DPW believes that a minimum of 180 parking spaces would be adequate.
16. The District of Columbia Department of Finance and Revenue (DFR), by memorandum dated November 18, 1987, indicated the following:

"The evidence presented to support the change in the mix development is persuasive. We would, however, note that the large supply of office space is also becoming a problem in the District of Columbia downtown area."
17. The District of Columbia Metropolitan Police Department (MPD), by letter dated November 13, 1987, is not opposed to the application.
18. Advisory Neighborhood Commission - 2C, by letter dated November 19, 1987, supported the application and stated the following:

"In changing the originally proposed mixture of uses, the applicant has the opportunity to make certain design changes that will allow for the creation of a distinct residential community. The ANC fully supports the applicant's efforts to promote housing in this area.

Especially significant are the project amenities that will accompany the requested change. The project will include rental housing, retail tenant subsidies that will help to attract service-oriented businesses, an arts exhibition area and a community meeting room. The ANC notes that these amenities will help to create a "living downtown" and will benefit the surrounding community. The ANC is also highly supportive of the Applicant's exemplary affirmative action plan which includes significant commitments to minority employment that extend beyond the construction phase of the project."

19. The Pennsylvania Avenue Development Corporation (PADC), by testimony presented at the public hearing, supported the application and considers it to be an appropriate mix of uses and an exciting design. PADC noted that in June 1987, the proposal received the preliminary approval of the PADC Board and in September 1987, the Board approved the 170 apartment unit design. The approved scheme was based on the provision of 170 units for ten years with the flexibility to reduce the number of units to no fewer than 150 after the initial ten-year period. PADC noted that the proposal will form a critical role in the creation of a viable residential community in this area. PADC also noted that the 170 unit limitation would be imposed through a covenant that would guarantee that this number of units would be provided for a minimum of 10 years. For an additional 10 years, the applicants will agree through the same covenant, that the project shall contain a minimum of 116,000 net square feet of floor area devoted to residential use.
20. PADC noted that, in the future, the applicants may need this flexibility of combining units to respond to market forces and, therefore, recommended that the Commission continue the 150 unit stipulation contained in the original PUD order. Finally, PADC noted that the applicants require flexibility in such items as material selection and final design details because the project falls both under the jurisdiction of PADC and the Commission of Fine Arts. The PADC therefore noted that the applicants should be provided with sufficient flexibility to meet the specific requirements that will be forthcoming as the design proceeds forward.

21. The Downtown Cluster of Congregations (DCC), an association of twenty-four (24) churches, by testimony presented at the public hearing, supported the application because of the residential component, affirmative action program, the subsidies for retail tenants, and the availability of space for arts programs and community meetings.
22. The Washington Project for the Arts (WPA), by testimony presented at the public hearing, noted that the applicants' commitment to underwrite the cost of the exhibition space for the first five years of the development is an enlightened proposal because it addresses the economic issues confronting the arts community.
23. There were two additional persons who testified at the public hearing in support of the application for reasons previously mentioned. There were also two letters in support that were received for reasons previously mentioned.
24. There were no letters nor testimony received in opposition to the application.
25. The Commission concurs with the applicants' conclusion that a hotel use would not be viable on the subject site. The Commission finds that the modified Phase II project is well designed and planned, and will address the needs of the community.
26. The Commission concurs with the position of ANC-2C, DPW, DFR, MPD, PADC, DCC, and WPA.
27. The Commission concurs with the recommendation of OP, with the exception of the permanent requirement of 170 apartment units. The Commission finds that the requirement of 150 apartment units, the retention of 116,000 square feet of floor area devoted to residential use, and the flexibility to reduce the number of apartment units from 170 to 150 after ten (10) years is reasonable and appropriate.
28. The Commission believes that the proposal is in the best interest of the District of Columbia, is consistent with the intent and purpose of the Zoning Regulations.
29. The proposed action of the Zoning Commission to approve the application with conditions was referred to the National Capital Planning Commission (NCPC), as provided for in the District of Columbia Self-Government and Governmental Reorganization Act. By report dated March 3, 1988, NCPC found that the proposed amendments to

Zoning Commission Order No. 396 would not adversely affect the Federal establishment or other Federal interests in the National Capital, nor be inconsistent with the Comprehensive Plan for the National Capital.

CONCLUSIONS OF LAW

1. The application is properly processed as a modification to the previously approved PUD.
2. The modified development of this PUD would carry out the purposes of 11 DCMR 2400.
3. Approval of the proposed modifications would be consistent with the purposes of the Zoning Act (Act of June 20, 1938, 52 Stat. 797), by furthering the general public welfare and serving to stabilize and improve the area.
4. Approval of the proposed modifications is not inconsistent with the Comprehensive Plan for the National Capital.
5. The proposed modifications can be approved with conditions which insure that development will not have an adverse effect on the surrounding community.
6. The approval of the modified PUD would promote orderly development in conformity with the entirety of the District of Columbia zone plan as embodied in the text and maps of the Zoning Regulations of the District of Columbia.
7. The approved modifications are fully consistent with the spirit and intent of Z.C. Order No. 396.
8. In its decision, the Zoning Commission has accorded Advisory Neighborhood Commission-2C the "great weight" to which it is entitled.

DECISION

In consideration of the Findings of Fact and Conclusions of Law herein, the Zoning Commission hereby orders APPROVAL for a PUD modification for Lots 12, 18 and 19 in Square 459 (known as Phase II), and that Z.C. Order No. 396 be amended as follows:

1. The planned unit development modifications approved herein shall be developed in accordance with the plans prepared by Hartman-Cox, Architects, and CHK, Architects, dated September 28 and November 9, 1987, as

supplemented by drawings dated December 14 and 23, 1987, all of which are identified respectively as Exhibits numbered 23c, 27, 44c, and 44d of the record, as such plans may be modified to conform to the guidelines, conditions, and standards of this order.

2. The Phase II portion of the planned unit development shall be a mixed-use project consisting of residential, retail, and office uses.
3. The height of the office building shall not exceed 130 feet, excluding the parapet and penthouse. The height of the adjacent residential building shall not exceed 130 feet, exclusive of the tower, the penthouse, and the parapet.
4. The Phase II project will contain a minimum number of 170 residential units occupying approximately 116,000 net square feet of space for 10 years. Thereafter, the unit count may be reduced to no fewer than 150 units. In the event of a reduction in unit count, the square footage devoted to residential use shall not be reduced.
5. Consistent with the minimum number of units established above, the applicants are given the flexibility to divide the square footage of each apartment floor into any size, number, and configuration of units.
6. The total gross floor area of the Phase II project shall not exceed 341,198 square feet.
7. The overall lot occupancy for the entire PUD shall not exceed 55 percent.
8. The FAR for the Phase II project shall not exceed 6.05.
9. Off-street parking shall be provided for a minimum of 180 vehicles. Depending upon site conditions, the applicants may provide up to 207 parking spaces.
10. The Phase II project will contain a total of two 55-foot loading berths, as shown on the plans.
11. A fire lane having a minimum width of twenty feet shall be provided on the western edge of the site running between Pennsylvania Avenue and Indiana Avenue, and shall be constructed in accordance with the standards of the D.C. Fire Department.
12. The use of the driveway shall be restricted to passenger automobiles and designed as shown on the alternative site plan, Exhibit No. 44c.

13. The applicants shall require each retail tenant to include in any agreement with a supplier a condition which requires the supplier and its agents not to use the driveway for deliveries or parking.
14. The applicants shall insure that a member of the management staff of the Phase II Project actively and effectively monitors the driveway for parking which is contrary to any District of Columbia regulation, including the conditions of this Order. The staff member shall do the following:
 - a. Observe the driveway as frequently during each day as is reasonably required to prevent and abate parking violations; and
 - b. Promptly arrange for the removal, whether by towing or otherwise, of any vehicle which is parked in violation of this Order or any District of Columbia regulation.
15. The applicants shall provide project amenities, including the following:
 - a. Retail tenant subsidies that will be associated with approximately 20% of the retail space. The subsidized rental program will be targeted to retail establishments that have been displaced from elsewhere in the nearby downtown area, and to businesses which are oriented toward providing services for residential uses.
 - b. An arts exhibition area consisting of at least 500 square feet of space on the first floor retail level. The space will be provided rent-free for a period of five years from the date that a certificate of occupancy is obtained for the building.
 - c. A conference facility of at least 1000 square feet that will be made available to tenants of the office building. The conference facility will also be made available, at no more than nominal cost, to local community groups and residents.
 - d. An affirmative action plan that will involve minority ownership, bona fide efforts to hire minorities, women, handicapped persons or Vietnam era veterans for 35% of the construction jobs, 25% of the professional and technical jobs and 20% of the jobs associated with the management and operation of the building. The applicants shall also make a bona fide effort to award 25% of the dollar value of contracts for professional and technical services and construction contracts to

businesses owned by minorities, women, handicapped person, or Vietnam-era veterans (the "specified minority groups"). The applicants shall also make a bona fide effort to purchase 20% of the dollar value of its supplies from such businesses. The applicants shall make a bona fide effort to lease 20% of the retail space to such businesses. Finally, the applicants will consider financial institutions that are owned or operated by members of the specified minority groups in seeking financing for the project, and will make a bona fide effort to deposit 20% of all revenue generated by the project after completion into such institutions.

- e. A recreation/health facility consisting of at least 1000 square feet for the residents of the project and the office building tenants.
 - f. Separate roof decks for the residential and office buildings. The residential roof deck will consist of at least 1500 square feet. The office roof deck will consist of at least 1200 square feet.
 - g. Streetscape improvements as shown on the landscape plan.
16. The applicants shall be provided with flexibility in the following design details:
- a. Final color selection, which will be based on field mock-up panels, samples, and material availability.
 - b. Minor refinements to exterior details which include belt courses, sills, bases, cornices, and trim.
 - c. Minor refinements incorporating suggestions of PADC and the Commission of Fine Arts that are consistent with the design intent.
 - d. Minor refinements to final quantity, size, and location of windows, emergency egress doors, and ventilation grills, in order to coordinate with the newly adopted D.C. Building Code.
 - e. Minor adjustments in the location of storefront entry doors and the location of terrace and balcony access doors will be necessary.
 - f. Adjustments in the location of roof decks, conference facility and recreation/health facility.
17. Signs for retail establishments shall be placed in a


uniform location for each store and shall be restricted to the band above the doors. No individual sign shall exceed the dimensions of two feet by five feet.


18. Except as explicitly modified in this Order, the conditions and other provisions of Z.C. Order No. 396 shall remain in full force and effect.
19. The planned unit development approved by the Zoning Commission shall be valid for a period of two years from the effective date of this Order. Within such time to continue the effectiveness of the approval, application must be filed for a building permit for the project, pursuant to 11 DCMR 2407.2 and 2407.3. Construction shall start within three years of the effective date of this Order.
20. No building permit shall be issued for this PUD until the applicants have recorded a covenant in the Land Records of the District of Columbia, between the owner and the District of Columbia and satisfactory to the Office of the Corporation Counsel and the Zoning Regulations Division of the Department of Consumer and Regulatory Affairs (DCRA), which covenant shall bind the applicants and successors in title to construct on and use this property in accordance with this order, or amendments thereof, of the Zoning Commission.
21. The Zoning Secretariat will not release the record of this case to the Zoning Regulations Division of the DCRA until the applicants have filed a certified copy of said covenant in the records of the Zoning Commission.

Vote of the Zoning Commission taken at the public meeting on January 11, 1988: 4-0 (Patricia N. Mathews, Maybelle T. Bennett, Lindsley Williams and John G. Parsons, to approve with conditions - George M. White, not present not voting).

This order was adopted by the Zoning Commission at its public meeting on March 14, 1988 by a vote of 4-0: (Patricia N. Mathews, John G. Parsons, Maybelle T. Bennett and Lindsley Williams, to adopt as amended - George M. White, not voting, not having participated in the case).

In accordance with 11 DCMR 3028, this order is final and effective upon publication in the D.C. Register, that is on
25 MAR 1988.



MAYBELLE T. BENNETT
Chairperson
Zoning Commission

EDWARD L. CURRY
Executive Director
Zoning Secretariat

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